

## § 242.103

## 49 CFR Ch. II (10–1–13 Edition)

(5) A procedure for knowledge testing that complies with the criteria established in § 242.121; and

(6) A procedure for monitoring operational performance that complies with the criteria established in § 242.123.

(b) [Reserved]

### § 242.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written certification program and request for approval in accordance with the procedures contained in appendix B of this part according to the following schedule:

(1) A Class I railroad (including the National Railroad Passenger Corporation), Class II railroad, or railroad providing commuter service shall submit a program no later than September 30, 2012; and

(2) A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit a program no later than January 31, 2013.

(b) A railroad commencing operations after the pertinent date specified in paragraph (a) of this section shall submit its written certification program and request for approval in accordance with the procedures contained in appendix B to this part at least 60 days prior to commencing operations.

(c) Each railroad shall:

(1) Simultaneous with its filing with the FRA, serve a copy of the submission filed pursuant to paragraph (a) or (b) of this section, a resubmission filed pursuant to paragraph (h) of this section, or a material modification filed pursuant to paragraph (i) of this section on the president of each labor organization that represents the railroad's employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) or (b) of this section, a resubmission filed pursuant to paragraph (h) of this section, or a material modification filed pursuant to paragraph (i) of this section a statement affirming that the railroad has served a copy on the president of each labor organization that represents the railroad's employees subject to this

part, together with a list of the names and addresses of persons served.

(d) Not later than 45 days from the date of filing a submission pursuant to paragraph (a) or (b) of this section, a resubmission pursuant to paragraph (h) of this section, or a material modification pursuant to paragraph (i) of this section, any designated representative of railroad employees subject to this part may comment on the submission, resubmission, or material modification:

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding;

(2) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590; and

(3) The commenter shall certify that a copy of the comment was served on the railroad.

(e) The submission required by paragraph (a) or (b) of this section shall state the railroad's election either:

(1) To accept responsibility for the training of conductors and thereby obtain authority for that railroad to initially certify a person as a conductor in an appropriate type of service; or

(2) To recertify only conductors previously certified by other railroads.

(f) A railroad that elects to accept responsibility for the training of conductors shall state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

(g) A railroad's program is considered approved and may be implemented 30 days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in this part.

(1) If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.

(2) If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the

original program may remain in effect until 30 days after approval of the revised program is received so long as the railroad has complied with the requirements of paragraph (h) of this section.

(h) A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this part.

(1) The Administrator will inform the railroad in writing whether its revised program conforms to this part.

(2) If the program does not conform, the railroad shall resubmit its program.

(i) A railroad that intends to materially modify its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of this part at least 60 days prior to implementing such a change.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The modification submission shall contain a description that conforms to the pertinent portion of the procedures contained in appendix B of this part.

(3) The modification submission will be handled in accordance with the procedures of paragraphs (g) and (h) of this section as though it were a new program.

[76 FR 69841, Nov. 9, 2011, as amended at 77 FR 6491, Feb. 8, 2012]

#### **§ 242.105 Schedule for implementation.**

(a) By September 1, 2012, each railroad shall:

(1) In writing, designate as certified conductors all persons authorized by the railroad to perform the duties of a conductor as of January 1, 2012; and

(2) Issue a certificate that complies with § 242.207 to each person that it designates.

(b) After September 1, 2012, each railroad shall:

(1) In writing, designate as a certified conductor any person who has been authorized by the railroad to perform the duties of a conductor between January 1, 2012 and the pertinent date in paragraph (d) or (e) of this section; and

(2) Issue a certificate that complies with § 242.207 to each person that it designates.

(c) No railroad shall permit or require a person, designated as a certified conductor under the provisions of paragraph (a) or (b) of this section, to perform service as a certified conductor for more than a 36-month period beginning on the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (d) or (e) of this section unless that person has been certified in accordance with procedures that comply with subpart B of this part.

(1) Except as provided in paragraph (c)(3) of this section, a person who has been designated as a certified conductor under the provisions of paragraph (a) or (b) of this section and who is eligible to receive a retirement pension in accordance with the terms of an applicable agreement or in accordance with the terms of the Railroad Retirement Act (45 U.S.C. 231) within 36 months from the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (d) or (e) of this section, may request, in writing, that a railroad not recertify that person, pursuant to subpart B of this part, until 36 months from the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (d) or (e) of this section.

(2) Upon receipt of a written request pursuant to paragraph (c)(1) of this section, a railroad may wait to recertify the person making the request until the end of the 36-month period described in paragraph (c) of this section. If a railroad grants any request, it must grant the request of all eligible persons to every extent possible.

(3) A person who is subject to recertification under part 240 of this chapter may not make a request pursuant to paragraph (c)(1) of this section.

(d) After December 1, 2012, no Class I railroad (including the National Railroad Passenger Corporation), Class II railroad, or railroad providing commuter service shall initially certify or